

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Chapter 436 Review Committee

July 8, 2008
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

July 8, 2008
Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, Missouri

Tuesday, July 8, 2008 – 8:00 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors, was called to order by James Reinhard, Chairman, at 8:15 a.m. on Tuesday, July 8, 2008, at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-President
Gary Fraker, Secretary
Daniel (Todd) Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Kimberly Grinston, Board's Legal Counsel
David Broeker, Director of Division of Professional Registration
Connie Clarkston, Director of Budget & Legislation

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent for this portion of the meeting.

July 8, 2008 – 9:30 a.m.

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, was called to order by James Reinhard, Chairman, at 9:45 a.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

COMMITTEE REGULATORS

Linda Bohrer, Acting Director-Department of Insurance, Financial Institutions and Professional Registration ("DIFP")

David Broeker, Director, Division of Professional Registration*

Sharon Euler, Office of the Attorney General*

ABSENT - Mary Erickson, Senior Enforcement Counsel- DIFP

Larry McCord, General Counsel- DIFP

ABSENT - Mark Stahlhuth, Senior Counsel- Financial Section, DIFP

Rich Weaver, Deputy Commissioner, Division of Finance

ADDITIONAL COMMITTEE PARTICIPANTS

James Reinhard, Chairman, State Board of Embalmers and Funeral Directors

Martin Vernon, Vice Chairman, State Board of Embalmers and Funeral Directors

Gary Fraker, Secretary, State Board of Embalmers and Funeral Directors

Joy Gerstein, Public Member, State Board of Embalmers and Funeral Directors

Todd Mahn, Member, State Board of Embalmers and Funeral Directors

John McCulloch, Member, State Board of Embalmers and Funeral Directors
and American Prearranged Services

Bob Baker, Wright Baker Hill Funeral Home

ABSENT - Barbara Brown, Layne Renaissance Chapel, LLC

Norma Collins, AARP

ABSENT - Tom Kutis, Kutis Funeral Home, Inc.

George Cline, Kutis Funeral Home, Inc.

Jim Moody, Lobbyist, SCI

Representative Timothy Meadows

ABSENT - Barbara Newman, Representative Meadows' Office

Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.

Darlene Russell, CFL Preneed

ABSENT - Josh Slocum, Executive Director, Funeral Consumer Alliance

Bill Stalter, Stalter Legal Services

ABSENT - Bill Trimm, Silver Haired Legislature

Jo Walker, Silver Haired Legislature

Don Otto, Executive Director, Missouri Funeral Directors and Embalmers
Association/Missouri Funeral Trust

Mark Warren, Inglish & Monaco- Representing the Missouri Preneed Insurers Coalition of six
(6) life insurers with interests in the Missouri preneed market, including
Forethought Life Insurance Company, Funeral Directors Life, Great Western,

* Did not participate as a voting member of the Working Group. Due to pending litigation, the Missouri Attorney General's Office also refrained from voting, however, the Attorney General's Office assisted in Working Group discussions.

Homesteaders Life, National Guardian Life Insurance Company, and Pekin Life.

Mike Winters, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration*

Becky Dunn, Executive Director, State Board*

Darcie Rehagen, Division of Professional Registration*

Kimberly Grinston, Legal Counsel, Division of Professional Registration*

Lori Hayes, Inspector, State Board*

*Will not participate as a voting member of the Chapter 436 Review Committee Working Group. Due to pending litigation, the Missouri Attorney General's Office will also refrain from voting, however, the Attorney General's Office will assist in Working Group discussions.

Visitors Present:

Richard Brownlee, Hendren Andrea LLC

Marian Hutchings, Hutchings Funeral Chapel

Vickie Seiler, Hutchings Funeral Chapel

James Miller, Reser Funeral Home

Kalene Summerville, Summerville & Patton Funeral Home

Chris Follis, Follis & Sons Funeral Home

Steve Watkins, Watkins & Sons Funeral Home

Chris Moody, Moody & Associates, SCI

Tim Scott, Hedges-Scott Funeral Home

Bill Bennett, Britton Bennett Funeral Home

Larry Stroud, MFDEA President

Brad Speaks, Speaks Family Legacy Chapels

Bob Speaks, Speaks Family Legacy Chapels

Jeff Stygar, Stygar Funeral Homes

Brian May, Chapel Hill Mortuary & Memorial Gardens

Sarah Madden, Attorney General's Office

Deanna Borland, Mike Winter Consultants

During the 2008-2009 legislative session, several legislative proposals were introduced to significantly revise and amend Chapter 436 governing preneed sales in the state of Missouri. Although the majority of proposals were not enacted, Senate Bill 788 was passed by the General Assembly which created the Joint Committee on Preneed Funeral Contracts.

After the close of the legislative session, Senator Delbert Scott and Representative Jay Wasson met with several of the legislative participants to discuss the unresolved Chapter 436 concerns. The discussion revealed several common areas of agreement among regulators, industry representatives and consumer groups. The Board was subsequently asked to formulate a working group to help identify those collective areas of agreement and to collate suggested legislative recommendations for the Joint Committee's review.

The Working Group consists of representatives from all aspects of the preneed industry, including, preneed providers/sellers, consumer groups, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Public participation is welcome and will also be afforded an opportunity to provide both oral and written comments.

To guide the review, the State Board of Embalmers and Funeral Directors formulated a survey containing a listing by topic area of Chapter 436 proposals previously submitted to the board. Participants were asked to rank the priority of topic areas for purposes of discussion. Rankings were subsequently compiled by the Division and used to structure Working Group discussions.

<p style="text-align: center;">MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS PRENEED SURVEY RESULTS</p>
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HIGHEST PRIORITY

19. Addressing preneed provider obligations on default by the seller [61]
26. **Depositing of preneed funds [66]**
30. Changing/clarifying amount of preneed funds required to be trusted (100%, 80%, etc.) [64]
33. Clarifying whether trust accounts are required for all preneed sellers [62]
34. Changing/clarifying trustee duties/responsibilities [61]
35. Changing/clarifying allowed use of independent investment advisors [60]
39. Proper investment of trust funds (term life, whole life, "reasonable person" standard) [63]
47. Changing/clarifying trust requirements for preneed sellers issuing insurance funded preneed contracts [62]
48. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (should this go to the Bd. Or the Department of Insurance?) [63]

SIGNIFICANT PRIORITY

4. Changing/clarifying the Board's audit authority (i.e.- allowing random/regularly scheduled audits) [56]
5. Changing a preneed "registration" to a preneed "license" [50]
6. Registering/licensing of individuals selling on behalf of preneed sellers [51]
7. Clarifying/changing preneed requirements for cemeteries [51]
11. Changing/clarifying preneed provider/seller annual report requirements [50]
12. Changing/clarifying information reported by preneed providers/sellers to the Bd. [51]
13. Changing/clarifying provider/seller reporting requirements to third parties (i.e.- reporting to consumers/sellers) [53]
14. **Allowing/prohibiting third party sellers [58]**
20. Changing/clarifying portability requirements (changing providers or transferring to another seller) [55]
22. Adopting/requiring standard forms for preneed contracts [50]

24. Changing/clarifying provisions for cancelling preneed contracts [51]
27. Prohibiting or adopting standards for the collections of funds by preneed providers [52]
28. Changing/clarifying record keeping for preneed payments [51]
31. Changing/clarifying preneed refund provisions [53]
36. Changing/clarifying trustee reporting/notification requirements (i.e.- trustee reports to the Bd., consumers sellers, providers, the AG, etc.) [53]
37. Record keeping requirements for trustees [52]
38. Changing/clarifying permitted trust disbursements [57]
43. "Rollover"/transfer of trust funds [52]
44. Notification of trust changes/transfers (i.e.- notification to the Bd., sellers, consumers, etc.) [53]
- 45. Allocation of preneed interest [58]**
46. Prohibiting/restricting insurance funded preneed plans [50]
49. Addressing/clarifying cancellation of insurance funded preneed plans [52]
50. Portability of insurance funded preneed plans (transferring providers/insurers/sellers) [56]
59. Expanding/modifying criminal/civil authority of the Attorney General's Office [50]
63. Changing/clarifying requirements for cancellation of joint account contracts [53]
64. Amending/modifying refund requirements for preneed funds held in joint accounts [50]
65. Portability of joint accounts [50]
67. Allowing/modifying auditing or examination of joint accounts [50]

MODERATE PRIORITY

1. Transferring Chapter 436 regulatory authority to another agency (i.e.- insurance, finance, the Attorney General's Office) [44]
2. Transferring auditing functions only to another agency (i.e.- insurance, the Attorney General's Office) [45]
3. Rulemaking authority for the Board [44]
8. Addressing preneed provider/seller fees [46]
10. Late fees for late annual report filings [43]
15. Requiring all preneed providers to be funeral establishments [41]
17. Allowing insurance funded preneed plans only [40]
18. Restricting preneed sales by to insurance agents only [41]
21. Changing/clarifying basic requirements for preneed contracts [45]
23. Requiring the filing or approval of preneed forms & contracts with/by the Bd or other agency [47]
25. Changing/clarifying record keeping requirements for preneed providers/sellers (i.e.- what and how long records have to be maintained) [48]
- 29. Adopting/requiring notification to consumers of preneed fund payments, deposits, interest or about account statements [49]**
- 40. Location of trustees/trust accounts (Does the trust/trustee have to be in Missouri?) [49.5]**
41. Location of trust records [47]
- 42. Commingling of trust funds [49]**
51. Changing/clarifying the Board's current investigative/examination/audit process [43]
52. Modifying the Board's current disciplinary authority (Should it be limited/expanded?) [48]
53. Allowing/modifying release of complaint information to the public [47]
54. Allowing/modifying release of complaint information to providers/sellers with contractual relationships [46]

- 55. Allowing civil penalties/fines for 436 violations [42]
- 56. Assessment of audit/examination/investigation fees [43]
- 57. Allowing the Board to hire legal counsel [49]
- 58. Expanding/modifying investigative, audit or examination powers of the Attorney General's Office [49]
- 60. Allowing or prohibiting the use of joint accounts [44]
- 61. Changing/clarifying reporting requirements for joint account holders [47]
- 62. Amending consumer notification requirements for joint account contracts [45]
- 66. Trust requirements for entities with joint accounts [48]

LOW PRIORITY

- 9. Granting Board authority to set fees [39]
- 16. Requiring bonding/insurance for preneed providers/sellers [31]
- 32. Changing/clarifying requirements for payments to providers for at-need services (time periods, recordkeeping, amount, etc.) [35]

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, will be discussing the following general topics during this meeting. The Board has scheduled additional meetings on July 15th, July 24nd, July 29th and August 12 to address additional concerns.

Approval of Agenda

Motion was made by Gary Fraker and seconded by Todd Mahn to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, Joy Gerstein voting in favor with no votes in opposition.

Discussion will be reasonably limited to the topics identified below. The topics listed below are not suggestions of the Board. These are general topics/suggestions that have been presented to the board prior to the Chapter 436 meetings/discussions. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. The Chapter 436 Review Committee will take all public suggestions and proposals under review and consideration before or at the next Chapter 436 Review Committee Meeting.

A. CHAPTER 436 LEGISLATIVE DISCUSSION:

GENERAL ADMINISTRATION:

TOPIC
1. Transferring Chapter 436 regulatory authority to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.)

2. Transferring auditing functions only to another agency (i.e.- Insurance, Finance, the Attorney General's Office, etc.)

PRENEED SELLER ISSUES

TOPIC
3. Allowing/prohibiting third party sellers
4. Allowing insurance funded preneed plans only
5. Restricting preneed sales to insurance agents only
6. Requiring bonding/insurance for preneed sellers

INSURANCE ISSUES

TOPIC
7. Allowed use of insurance funded preneed plans (Including what type of insurance plans may be used)
8. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (Should this go to the Bd. or the Department of Insurance?)

PRENEED PROVIDER ISSUES

TOPIC
9. Clarifying who can be licensed as a preneed provider (i.e.- must all preneed providers be licensed funeral establishments)
10. Requiring bonding/insurance for preneed providers

LICENSING/REGISTRATIONS:

TOPIC
11. Changing a preneed "registration" to a preneed "license"
12. Registering/licensing of individuals selling on behalf of preneed sellers
13. Licensing requirements for preneed registrants
14. Clarifying/changing preneed registration or licensing requirements for cemeteries
15. Clarifying whether trust accounts are required for all preneed sellers

JOINT ACCOUNTS

TOPIC
16. Clarifying/amending persons authorized to use joint accounts (i.e.- should they be allowed for providers, sellers or both)

HANDLING OF PRENEED CONTRACTS

TOPIC
17. Changing/clarifying basic requirements for preneed contracts

18. Adopting/requiring standard forms for preneed contracts
19. Requiring the filing or approval of preneed forms & contracts with/by the Bd. or other agency
20. Definition of a "preneed contract"

COMPLAINTS/DISCIPLINE

TOPIC
21. Changing/clarifying the current Chapter 436 investigative/examination/audit process
22. Modifying the current disciplinary authority (Should it be limited/expanded?)
23. Allowing/modifying release of complaint information to the public
24. Allowing/modifying release of complaint information to providers/sellers with contractual relationships
25. Allowing civil penalties/fines for Chapter 436 violations
26. Allowing the regulatory agency for Chapter 436 to hire legal counsel
27. Expanding/modifying investigative, audit or examination powers of the Board/Attorney General's Office/Missouri Department of Insurance, etc.
28. Expanding/modifying criminal/civil authority of the Board/Insurance/Attorney General's Office

B. GENERAL DISCUSSION:

- Summary and general overview of trusting requirements for preneed funds from other states
- Summary and general overview of preneed refund requirements from other states (on cancellation, default, transfer, etc.)

David Broeker, Director, Division of Professional Registration

- As you are all aware, the funeral preneed industry has recently been a topic of discussion across the country and in the State of Missouri.
- The preneed industry and Chapter 436 has also been a concern for the Board of Embalmers and Funeral Directors for several years.
- *At the end of last legislative session, SB 788 was passed which established the "Joint Committee on Preneed Funeral Contracts". The Joint Committee will consist of 14 members- 7 from the House and 7 from the Senate.*
- It is our understanding that the goal of the Joint Committee will be to review some of the preneed concerns and to look at whether legislative changes are necessary.
- In a recent meeting, Sen. Scott and Rep. Wasson invited individuals from different aspects of the preneed industry to review Chapter 436 and to help identify areas in Chapter 436 where change may be needed. It is our understanding that these suggestions will be presented to the Joint Committee to review when the Joint Committee convenes after August 28th.
- The Board of Embalmers and Funeral Directors was asked to take the lead on this task.

- Specifically, the Board was asked to assist in organizing a meeting with representatives from the various sectors of the preneed industry, including, consumer groups, representatives from insurance, funeral directors, preneed sellers and the various regulators.
 - The goal today and through these meetings is to: (1) identify areas of common agreement and (2) formulate some suggested language for the Joint Committee to review.
 - This is an unprecedented opportunity for all of the preneed industry to come together with state regulators to provide some suggestions for the Joint Committee to review.
 - From my many years in state government, an opportunity like this doesn't present itself every session. We want to thank Sen. Scott and Rep. Wasson for their invitation and for allowing the Board to assist with this process.
 - This is really an opportunity for all of you to have a positive impact on an issue that affects a lot of people.
 - As with anything, I am sure you are not going to be able to agree on absolutely everything.
 - However, I would encourage you to take advantage of this truly rare opportunity and to make a good faith attempt to provide some strong guidance for the Joint Committee and perhaps the General Assembly.
 - Quite frankly, it appears that a preneed proposal will most likely be introduced this session either with or without this group's participation.
 - Of course, it would be good, and we would prefer, for this to happen with all of your participation.
 - We have some aggressive timeframes. Cooperation will be the key to getting this done.
 - We have no idea what will happen with the legislative process after you finish meeting and develop your suggestions.
 - There are no guarantees that what this group develops will actually be enacted by the General Assembly.
 - However, by working together, you'll at least have a chance to provide some suggestions from the people who are actually going to be affected by any change to Chapter 436.
 - Also, you'll have this opportunity to at least present something for the Joint Committee to actually review in its work.
- Again, I encourage you all to work together. Thank you for your time and for being willing to participate in this process.

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration

- On behalf of Sen. Delbert Scott and Rep. Jay Wasson, I would like to thank those of you on the review committee as well all who are observing today for your participation in this process.
- As David has stated, we have been given a unique opportunity to provide input to the Joint Committee.
- During the 2008 legislative session, two House bills were introduced to address changes in Chapter 436.
- As part of the legislative process, the Division of Professional Registration receives a copy of each bill pertaining to the division and any of its boards. The bills are sent for review of

fiscal impact. At the same time the division request that each bill be reviewed for impact to the board and its profession.

- The division is often asked by various members of the General Assembly to provide input regarding the intent as well as the language of a bill.
- The 2 bills introduced I mentioned earlier in 2008 were handled in this manner.
- The Board of Embalmers and Funeral Directors review HB2469 (Rep. Kuessner) and HB2594 (Rep. Meadows)
- The Board of Embalmers and Funeral Directors began review of the legislation at their April 7, 2009 meeting. Due to the gravity of the preneed issues, the board held additional meetings to gather input from the industry.
- A draft was presented to Sen. Scott and Rep. Wasson in early April. From that draft, the board was requested to provide a list of 5 priorities in hopes that something could be passed prior to session ending.
- The magnitude of this issue brought much attention and concern to the General Assembly and the Joint Legislative Committee was established in SB788. As of today, that bill is awaiting the Governor's signature.
- The bill specifically requires the Joint Committee to disband on January 31, 2008. In order to facilitate efforts, Sen. Scott called various state regulators and members of the funeral industry to a meeting. The meeting focused on bringing forth issues from all aspects of Chapter 436.
- Again, during that meeting the division and board were asked to assist facilitate the Joint Committee by bringing forth areas of common ground and those areas needing additional input.
- It is important to understand that the document that comes from this meeting will not be the board's proposal. It will merely represent the consensus of the Review Committee. However, the board, like any group represented here, will have the opportunity to take a full board vote on the proposal at the conclusion of the Review Committee meetings. That vote in turn, will be shared with the Joint Legislative Committee. We would encourage your specific group to do the same.
- Given the short timeframes in which we will be working we will be operating under the following format:
 - A topic will be introduced
 - Relevant background information will be provided
 - Committee member dialogue will be held
 - Committee members will be recognized by the chair to speak. In order to facilitate participation you will find a colored card at your seat. We ask that you place the card next to your name plaque for the chair to recognize you.
 - Once the committee dialogue is completed, public comments will be received. We are establishing a 15 minute limit for each topic and ask that each person limit individual comments to 2 minutes a piece.
 - Because we have a court report present, we ask that prior to addressing your comment, that you provide your name and who you are representing. Please speak clearly and wait for the court report to acknowledge your communication.
 - A timekeeper will announce time at the end of the 2 minutes and the next individual will be recognized by the chair to speak.

- If time does not allow you to provide your specific comment, a comment sheet is available for you to use.
- At the end the discussion for each topic we will take a vote for the consensus of the group.
- Kim and I will draft language and will share the review draft after the 3rd meeting.
- We will also provide a document which includes the issues of commonly agreed upon and those that are unsettled.
- The last meeting of the Review Committee will be utilized to review the final draft documents to be submitted to the Joint Legislative Committee.
- If at any point you would like to submit a comment after a vote has been taken by the review committee, whether you are member or not, we ask that the comment be submitted on the Comment Sheet.
- Electronic comments can be submitted; however, we ask that those come to my email address only. Please do not send any comments to the board office. My email address is on the Comment Sheet.

Again, we thank your time and participation and appreciate your cooperation as we move through this process.

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent for this portion of the meeting.

Recess

The board recessed for a Closed Meeting working lunch at 12:00 p.m. and reconvened at 1:30 p.m.

12:15 p.m. – 1:30 p.m. – Closed Meeting

Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

1:30 p.m. - 5:30 p.m. – Open Meeting

Missouri Council of School Administrators
3550 Amazonas Drive (lower level)
Jefferson City, MO 65109

The State Board of Embalmers and Funeral Directors, Chapter 436 Review Committee, returned to open session. The open meeting was called to order by James Reinhard, Chairman, at 1:30 p.m., at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri.

Chapter 436 Review discussion continued throughout the meeting.

Adjournment

A motion was made by Martin Vernon and seconded by John McCulloch to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 4:30 p.m. on Tuesday, July 8, 2008.

Executive Director: Buddy Quinn

Approved by the Board on: December 2-4, 2008